IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.100 OF 2006
WITH
CIVIL APPLICATION NO.114 OF 2006

Sandeep Sadashiv Shetty. ..Appellant.

V/s.

International Airport Authority. ..Respondent.

WITH

APPEAL FROM ORDER NO.101 OF 2006

Pyarelal B. Vishwakarma. ..Appellant.

V/s.

International Airport Authority. ..Respondent.

Mr.S.K.Dubey for appellant.

Mr.R.R.Salvi with P.R.Salvi & Rucha Tawade i/b M/s.M.V.Kini & Co.for Respondent.

CORAM: A.M.KHANWILKAR,J

DATE : FEBRUARY 10, 2006.

P.C. :

1. Both these appeals can be disposed of by common order.

2. Admit.

3. Mr.R.R.Salvi waives notice for the respondent.

4. As short question is involved, appeals are taken up for hearing forthwith by consent.

5. These appeals question the correctness of the order passed by the trial Court dismissing the Notice of Motion preferred by the appellant in respective appeals. The trial Court indeed, has found that the material placed on record mainly 7/12 extracts was not sufficient to identify the fact that the suit structure was a protected structure. The trial Court has also adverted to the decision of this Court in relation to the said structure presently occupied by Pyarelal Boulram Vishwakarama and another who are appellants in Appeal From Order No.101 of 2006 to hold that in the past the structure upto 60ft. X 20ft. was held to be in physical possession of predecessor of the said appellants Mr.Dasar. The copy of the decision of this court in First Appeal is placed before me. The operative part of the Judgment and Decree passed by this court clearly requires the respondent to follow due process of law, even in respect of structure admeasuring 20ft. X 60ft..

6. For the nature of order that I propose to pass, I have not adverted to all the materials on record as the counsel appearing for the respondent in

all fairness accepted the suggestion that the entire proceedings can be brought to an end if the limited grievance of the appellant was to be accepted, may be of following due process of law in respect of suit structure. This course was suggested as I found that several documents have been relied upon by the appellant in the shape of assessment bills, 7/12 extracts, licence and other such materials to support the plea that the structure in their respective possession is in existence prior to 1995 for which reason it may qualify as a protected structure. In the circumstances, the appropriate course would be to require the respondent to follow due process of law by giving formal statutory notice which will have to be considered by the appropriate authority on its own merit in accordance with the law, uninfluenced by the observations made in the impugned order or for that purpose the present order. The respondent through their counsel assures to abide by that course.

7. Accordingly, appeals as well as civil application disposed of on the above terms making it once again clear that the issue regarding the existence of structure and whether it is authorised or "otherwise" will have to be considered by the appropriate authority on its own merit in accordance

with the law. Till such time, no precipitative steps shall be taken by the respondent in respect of the suit structure.

8. In view of this arrangement, nothing would survive for consideration even in the suit instituted by the appellant in the trial court. That suit can be disposed of as the respondent is willing to follow due process of law with regard to the suit structure involved in the present proceedings. Appeals as well as Civil Application are disposed of on the above terms.